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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 - - - - - x

4 In the Matter of:

5 AC 1 INV MANAHAWKIN LLC,

6 CASE NO. 14-22791-rdd

7 Debtor.

8 - - - - - x

9 AC 1 MANAHAWKIN MEZZ LLC,

10 CASE NO. 14-22792-rdd

11 Debtor

12 - - - - - x

13 AC 1 MANAHAWKIN LLC,

14 CASE NO. 14-22793-rdd

15 Debtor

16 - - - - - x

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19 U.S. Bankruptcy Court

20 300 Quarropas Street

21 White Plains, NY

22

23 June 30, 2014

24 11:06 AM

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1 B E F O R E :
2 HON ROBERT D. DRAIN
3 U.S. BANKRUPTCY JUDGE
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1 Hearing re: AC 1 Inv. Manahawkin LLC, Ch. 11

2 Initial Case Conference AC 1 Inv. Manahawkin LLC, Ch. 11

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4 Hearing re: Application to Extend Time to File Schedules
5 and Statement of Financial Affairs filed by Arnold Mitchell
6 Greene on behalf of AC I Manahawkin Mezz LLC. (Document(s)
7 8)

8 Hearing re: Motion for Joint Administration filed by Arnold
9 Mitchell Greene on behalf of AC I Manahawkin Mezz LLC.
10 (Document #7)

11

12 Hearing re: Motion to Dismiss Case filed by Lucas F.
13 Hammonds on behalf of Tibor and Gershon Klein. (Document(s)
14 10)

15

16 Hearing re: Motion to Shorten Time for Motion to Dismiss
17 Case filed by Lucas F. Hammonds on behalf of Tibor and
18 Gershon Klein (Document #11)

19

20 Hearing re: Letter Objecting to Motions to Shorten Time
21 (related document(s)10, 11) filed by Arnold Mitchell Greene
22 on behalf of AC I Manahawkin Mezz LLC. (Document #12)

23

24

25

1 Hearing re: Response of RCG LV Debt IV Non-REIT Assets
2 Holdings, LLC in Support of(I) Motion of Tibor Klein and
3 Gershon Klein for Orders Dismissing Bankruptcy Cases and
4 (II) Motion for Orders Shortening Notice for Motion of Tibor
5 Klein and Gershon Klein for Orders Dismissing Bankruptcy
6 Cases (related documents(s) 12, 11) filed by Kristopher M.
7 Hansen on behalf of RCG LV Debt IV non-REIT Assets holdings,
8 LLC. (Document #21)

9

10 Hearing re: Opposition to Motions of Tibor Klein and
11 Gershon Klein Seeking an Order Dismissing Chapter II
12 Bankruptcy Cases (related document(s)1 1) filed by Arnold
13 Mitchell Greene on behalf of AC I INV Manahawkin LLC.
14 (Document #22)

15

16 14-22792-rdd AC I Manahawkin Mezz LLC Ck II

17 Hearing re: Initial Case Conference

18

19 Hearing re: Application to Extend Time to File Schedules
20 and Statement of Financial Affairs filed by Arnold Mitchell
21 Greene on behalf of AC I Manahawkin Mezz LLC. (Document #8)

22

23 Hearing re: Motion for Joint Administration filed by Arnold
24 Mitchell Greene on behalf of AC1 Manahawkin Mezz LLC.
25 (Document(s) 7)

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1 Hearing re: Letter objecting to Motions to Shorten Time
2 (related document(s)10, 11) filed by Arnold Mitchell Greene
3 on behalf of AC I Manahawkin Mezz LLC. (Document #12)
4 Hearing re: Response or RCG LV Debt Iv Non-Reit Assets
5 Holdings, LLC in Support of(I) Motion of Tibor Klein and
6 Gershon Klein for Orders Dismissing Bankruptcy Cases
7 and (II) Motion for Orders Shortening Notice for Motion of
8 Tibor Klein and Gershon Klein for Orders Dismissing
9 Bankruptcy Cases (related document(s)10, 11) filed by
10 Kristopher M. Hansen on behalf of RCG LV Debt Iv non-REIT
11 Assets Holdings, LLC, (Document #20)

12

13 Hearing re: Opposition to Motions of Tibor Klein and
14 Gershon Klein Seeking an Order Dismissing Chapter 11
15 Bankruptcy Cases (related document(s)10) riled by Arnold
16 Mitchell Greene on behalf of AC I Manahawkin Mezz LLC,
17 (Document #21)

18

19 14-22793-rdd AC I Manahawkin LLC Ch. 11

20 Hearing re: Initial Case Conference

21

22 Hearing re: Application to Extend time to File Schedules
23 and Statement of Financial Affairs filed by Arnold Mitchell
24 Greene on behalf of AC I Manahawkin LLC. (Document # 8)

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1 Hearing re: Motion for Joint Administration filed by Arnold
2 Mitchell Greene on behalf or AC I Manahawkin LLC (Document
3 #7)

4

5 Hearing re: Motion to Dismiss Case filed by Lucas F.
6 Hammonds on behalf of Tibor and Gershon Klein
7 (Document(s)10)

8

9 Hearing re: Letter Objecting to Motions to shorten Time
10 filed by Arnold Mitchell Greene on behalf of AC I Manahawkin
11 LLC. (Document #15)

12

13 Hearing re: Letter Objecting to Motions to Shorten Time
14 (related document(s)10, 11) filed by Arnold Mitchell Greene
15 on behalf of AC I Manahawkin Mezz LLC. (Document #15)

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17 Hearing re: Response or RCG LV Debt Iv Non-Reit Assets
18 Holdings, LLC in Support of(I) Motion of Tibor Klein and
19 Gershon Klein for Orders Dismissing Bankruptcy Cases and
20 (TI) Motion for Orders Shortening Notice for Motion of Tibor
21 Klein and Gershon Klein for Orders Dismissing Bankruptcy
22 Cases (related document(s)10, 11) filed by Kristopher M.
23 Hansen on behalf of RCG LV Debt Iv non-REIT Assets
24 Holdings, LLC. (Document #26)

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1 Hearing re: Opposition to Motions of Tibor Klein and
2 Gershon Klein Seeking an Order Dismissing Chapter 11
3 Bankruptcy Cases (related document(s)10) filed by Arnold
4 Mitchell Greene on behalf of AC I Manahawkin Mezz LLC.
5 (Document #27)

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Transcribed by: Melissa Looney

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15 BY: HAROLD A. OLSEN, ESQ.

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17 OTTERBURG PC

18 For Acadia Realty Limited Partnership

19 (not given)

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21 BY: ADAM SILVERSTEIN

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1 ALSTON & BIRD LLP
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13 BY: JOSHUA N. HOWLEY, ESQ.

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22 BY: SERENE K. NAKANO, ESQ.

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24
25

1 P R O C E E D I N G S

2 THE COURT: All right. In re AC 1 Investment
3 Manahawkin LLC, AC 1 Manahawkin Mezz LLC and AC 1 Manahawkin
4 LLC.

5 MR. GREENE: Good morning, Your Honor. A Mitchell
6 Greene of Robinson Brogg Leinwand Greene Genovese & Gluck
7 for the debtors.

8 MS. NAKANO: Serene Nakano for the U.S. Trustee's
9 office.

10 MR. OLSEN: Good morning, Your Honor. Harold
11 Olsen from Stroock & Stroock & Lavan on behalf of RCG LV
12 Debt IV Non-REIT Assets Holdings, LLC.

13 MR. SILVERSTEIN: Good morning, Your Honor. Adam
14 Silverstein from Otterburg (ph) PC for Acadia Realty Limited
15 Partnership, a creditor of each of the debtors.

16 THE COURT: Good morning.

17 MR. DOHERTY: Good morning, Your Honor. John
18 Doherty of Alston & Bird on behalf of (indiscernible)
19 Capital Advisors, a special service for Deutsche Bank,
20 National Trust Company, as Trustee for Wells Fargo
21 Commercial Mortgage Securities, Certificate Series, 2011,
22 Page 3, that is the mortgage lender.

23 THE COURT: All right. Good morning.

24 MR. HOWLEY: Good morning, Your Honor. Josh
25 Howley from Sills Cummis & Gross on behalf of Tibor and

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1 Gershon Klein.

2 THE COURT: Good morning. Okay. So there are a
3 lot of matters on the calendar today. The Kleins want me to
4 deal with the authority and dismissal issues first, which
5 kind of make sense to me. The other issues are -- the other
6 matters are relatively simple matters and there's no real
7 objection to them, other than the issue of whether the cases
8 should be in bankruptcy at all.

9 So, why don't we turn to their motion? And I have
10 read the debtors' response, which came in this morning.

11 MR. GREENE: Your Honor, I apologize, but that was
12 the timeframe set --

13 THE COURT: I understand. It was an expedited
14 request.

15 MR. GREENE: And, Your Honor, I think the response
16 is clear. And I have to tell Your Honor, I've been doing
17 this for 35 years and this one makes no sense. I mean, the
18 fact pattern is pretty much agreed upon. We have a case in
19 which there is a foreclosure on the interest that would have
20 taken place if not for the filing. We have a Jewish holiday
21 that comes into play and it's an interesting way, but on the
22 Jewish holiday, they didn't want a Jewish person to actually
23 file it, so we had to have somebody in my office approved by
24 the parties to actually push the button.

25 Your Honor, there is no doubt that an email chains

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1 went out with the documents on the Tuesday preceding the
2 filing on a Wednesday. It would be uncontested and we will
3 show with the evidence of the emails, we can show with the
4 evidence of testimony that the clients clearly consented to
5 this filing, knew this was the only alternative. I think it
6 is un-refuted right now that the value of this shopping
7 center exceeds the debts on the property. And if the
8 shopping center were foreclosed upon and the interests were
9 foreclosed upon, it would delay the payments to two
10 creditors that would be received here.

11 I think the issue comes into play, Your Honor,
12 whether the personal interests or the pressure that the Mezz
13 lender would be pointing on the clients outlines the best
14 interest of the estate. I think all the (indiscernible) of
15 an equitable estoppel argument are here. I think the
16 writing that was evidenced by the emails that went out.

17 And its interesting, judge, but eight days after
18 those emails were sent, the parties -- we received a letter
19 objecting to the filing. Now, there was a two-day Jewish
20 holiday that ran from Wednesday -- it ran from sundown on
21 Tuesday to Thursday sundown. But you had Friday,
22 Saturday -- Chávez will take that away -- Sunday, Monday,
23 Tuesday -- nobody picks up the phone and said, you know,
24 what happened here and why did this happen.

25 Your Honor, there is an exit scenario here. The

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1 exit scenario is clear. There has been ongoing discussions
2 and various commitments regarding refinancing the center and
3 paying off the lenders and the creditors, or alternatively,
4 or simultaneously putting these properties up for sale under
5 a marketing analysis retaining an appropriate broker,
6 marketing and selling them and paying everybody off.

7 Now, subsequent to the filings on the 25th of
8 June, and we learned this on Friday, lawsuits were
9 commenced, I guess New York, in the state courts on the
10 guarantees.

11 Obviously those lawsuits are far from being
12 determined and there are other issues that give rise on
13 those lawsuits. But I think in the process here, Your
14 Honor, under the -- if given an evidentiary hearing on this,
15 I think we could show this Court that number one, there was
16 consent, number two, the clients can be equitably estopped
17 from arguing against and giving the apparent authority to
18 Mr. Rengle (ph) to exercise his sound business judgment by
19 filing it.

20 And I think, Your Honor, besides that, under 1112,
21 dealing with dismissal under 1112 and the evidence that
22 needs to be shown here that they cannot meet their burden
23 for dismissal based upon that.

24 THE COURT: Okay. All right. Have you had a
25 chance to look at the Debtors' response?

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1 MR. HOWLEY: I have, Your Honor.

2 THE COURT: Okay.

3 MR. HOWLEY: The bottom line here is, Judge, there
4 are three entities, two of which the operating agreements
5 provide clearly that unanimous written consent of the board
6 members is required in order to file bankruptcy petition.

7 There's no writing, Your Honor, authorizing AC 1
8 Manahawkin or AC 1 Manahawkin Mezz to file for bankruptcy.

9 As to the third entity, AC 1 Manahawkin INV., that operating
10 agreement requires a unanimous vote by all members of the
11 LLC of which my client's Tibor and Gershon Klein are members
12 and there's no evidence that they voted in favor of filing
13 the bankruptcy petitions.

14 Your Honor, there's -- I mean, I rest on the
15 record, which makes clear that --

16 THE COURT: Was there a unanimous written consent
17 for the TRO motion?

18 MR. HOWLEY: No, Your Honor. There was not.

19 THE COURT: Okay. Is your client here to testify?

20 MR. HOWLEY: He is not, Your Honor.

21 THE COURT: Okay. I think we should have an
22 evidentiary hearing on this. I've reviewed the
23 declarations. There's definitely a he said/she said element
24 to this, but just based on that review and a relatively
25 short review of the Delaware law, an apparent authority in

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1 equitable estoppel, as well as some of the case law
2 including the Glovas (ph) case, Judge Rasman's (ph) Glovas
3 case cited in the objection, which talks about the parties'
4 prior course of dealing, among other things. I can't decide
5 this on this record.

6 So, you all should meet and confer on a relatively
7 prompt discovery schedule if you want to take discovery. If
8 you don't, we can -- you can get an evidentiary hearing date
9 from Ms. Lee.

10 I do, you know, this is not the Glovas case,
11 exactly. There's no allegation that the Klein's are not
12 supporting a bankruptcy case because they were recipients of
13 a voidable transfer, as was the case in Glovas. On the
14 other hand, it was clearly asserted to me that the reason
15 they didn't want the bankruptcy is because they would be
16 liable on a guarantee that might be triggered and yet, as
17 members of the various debtors, they have fiduciary duties
18 to the debtors. So, I have yet to see a reason other than
19 that as to why they don't want the case in bankruptcy. So
20 they may be facing fiduciary duty issues separate and apart
21 from this, which is something you all should be talking
22 about.

23 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

24 THE COURT: I appreciate the lenders want clarity
25 as soon as possible, but I just can't do it on this record

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1 with the witnesses not here.

2 MR. HOWLEY: Thank you, Your Honor.

3 THE COURT: Okay. So, as far as the other matters
4 are concerned, initial case conference, application to
5 extend the time to file schedules and motion for joint
6 administration. I'm considering those obviously without
7 prejudice to the parties' rights as to whether the case
8 should be dismissed, but that's okay. And I do think
9 actually, the Klein's moved promptly. There's no question
10 about that, so there's no issue of laches there. You've
11 raised he point about the potential estoppel prepetition.
12 That's a separate --

13 MR. GREENE: Yeah, Your Honor, that was whole
14 purpose.

15 THE COURT: But there's -- my going forward on the
16 other matters that were on the calendar today are without
17 prejudice to the motion to dismiss.

18 MR. GREENE: I understand that, Your Honor.

19 THE COURT: Okay.

20 MR. GREENE: And, you know, Your Honor, we're
21 close to filing schedules. We shifted efforts were diverted
22 obviously by the motion. We believe we can have schedules
23 filed within a short periods of time and we also believe
24 that the joint administration here makes sense, that for the
25 purpose of having these cases administered jointly.

1 THE COURT: Well, I don't have an issue with the
2 joint -- does anyone have an issue with joint
3 administration? That's granted.

4 As far as the time to file schedules, you had
5 asked until July 2nd. Are you saying that you need some
6 more time beyond that?

7 MR. GREENE: I would ask, Your Honor, based upon,
8 I would ask for, you know, maybe a week --

9 THE COURT: July 9th?

10 MR. GREENE: Right.

11 THE COURT: That's fine. And on the initial case
12 conference, there are two lenders here, the Deutsche Bank
13 and then there's the Mezz facility. Is there cash -- are
14 there cash collateral issues?

15 MR. GREENE: No, there are not right now because
16 there's a lock box in place.

17 MR. DOHERTY: Well, I may disagree with that.
18 We're the mortgage lender. The collateral here for our loan
19 is the shopping center, the 300,000 square foot shopping
20 center in New Jersey with Kmart's and TJ Maxx and all that.
21 And those tenants paying each month into what we call the
22 Signature bank account and once a month that is swept by the
23 servicer and the monies are used to pay debt service and for
24 any protected advances for the property.

25 THE COURT: Right.

1 MR. DOHERTY: Until we have now is three and a
2 half weeks where we don't know what's going on with the
3 cash.

4 THE COURT: Okay.

5 MR. DOHERTY: We don't know what's going on with
6 the tenant and we don't know if anything is going on with
7 the property and so soon, I would expect, since this hasn't
8 been resolved today, we'll be making a motion for use of
9 cash collateral.

10 THE COURT: Okay. So, well no, they won't be
11 making a motion for you.

12 MR. DOHERTY: (Indiscernible).

13 THE COURT: But is the -- has the cash been used
14 since the petition date in the account?

15 MR. GREENE: No, Your Honor. The principle is
16 here it's in the bank.

17 THE COURT: Okay.

18 MR. GREENE: And, Your Honor, we would attempt to
19 work out a stipulation for cash collateral, because we
20 are --

21 THE COURT: Okay.

22 MR. GREENE: -- have the like interest of keeping
23 the shopping center going.

24 THE COURT: Right.

25 MR. GREENE: So, I will contact counsel or he's

1 free to call me and I'm sure we could stipulate for the
2 appropriate use.

3 THE COURT: But in the mean time, you're not using
4 rents to run the business or for any other reason?

5 MR. GREENE: No, Your Honor. And any expenditure
6 that have been laid out, have been laid out by the
7 principals and not by the debtor.

8 THE COURT: Okay. All right. Okay. So, you're
9 right. I'm assuming that you'll be speaking with counsel
10 for Deutsche Bank on that consensual cash collateral stip.
11 And that will probably include some disclosure about the
12 money going into the account.

13 Okay.

14 MR. GREENE: Your Honor, I think we -- for the
15 next status conference, whatever date we get, we'll roll
16 into the same date?

17 THE COURT: Fine. Yeah, that's fine.

18 MR. GREENE: Okay.

19 THE COURT: So, why don't you talk between
20 yourselves first on what sort of discovery you think is
21 worthwhile here. I'll resolve that if you can't reach
22 agreement on how long that will take. And then you can get
23 a date from Ms. Lee for an evidentiary hearing. I imagine
24 it will be about a half a day is my guess.

25 MR. GREENE: I would say so, Your Honor.

1 THE COURT: But I would urge you all to resolve
2 it. I think, unless I'm missing something here, whether
3 there's an authority problem or not, if the only reason that
4 the Klein's don't want this to be in Chapter 11 is because
5 of their own personal issues, they're in a conflict
6 situation and there's a problem there somewhere. Maybe not
7 in this Court, but it will be somewhere.

8 MR. GREENE: I agree, Your Honor, and I've opened
9 the dialogue with Mr. Howley and we will continue along
10 those lines to see if we can reach some sort of agreement.

11 THE COURT: Okay.

12 MR. GREENE: Thank you, Your Honor.

13 THE COURT: All right. Thanks.

14 (Proceedings concluded at 11:30 a.m.)

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1 C E R T I F I C A T I O N

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3 I, Melissa Looney, certify that the foregoing transcript is
4 a true and accurate record of the proceedings.

5

Melissa
Looney

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16 Date: July 14, 2014

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